Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	RM-8117, RM-8030
Future Development of SMR Systems	)	RM-8029
in the 800 MHz Frequency Band	)	

To: The Commission

COMMENTS OF UTC

Pursuant to Section 1.415 of the Commission's Rules, UTC[1/] hereby submits its comments with respect to the Further Notice of Proposed Rulemaking (FNPRM), in PR Docket No. 93-144, FCC 94-271, released November 4, 1994, in the above captioned matter.[2/]

I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines. Approximately 2,000 companies are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers to small, rural electric cooperatives and water districts serving only a few thousand customers.

[1/] UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

[2/] The Commission extended the deadline for the filing of comments and reply comments in this proceeding to January 5, 1995, and January 20, 1995 respectively, by Order, DA 94-1326, released November 28, 1994.

All utilities and pipelines depend upon reliable and secure communications facilities in carrying out their public service obligations. In order to meet these communications requirements, utilities and pipelines operate extensive private land mobile radio networks, including a large number of sophisticated conventional and trunked systems in the 800 MHz band on channels allocated to the Industrial/Land Transportation Radio Services, which effectively share spectrum with the Specialized Mobile Radio (SMR) Service through limited inter-category sharing rules. Accordingly, UTC is pleased to offer these comments on the Commission's proposed licensing framework for SMR frequencies in the 800 MHz band.

II. The FCC Should Prohibit Future SMR Licensing on Pool and General Category Frequencies

UTC strongly supports the Commission's proposal to revise the inter-category sharing rules to prohibit SMR and non-SMR applicants from applying for the same channels in the future. As the Commission correctly notes, this will establish a clear demarcation between SMR and non-SMR spectrum, and more importantly will eliminate the risk of SMR encroachment on non-auctionable spectrum allocated for internal use private radio systems.

Currently, 800 MHz SMR applicants are eligible for licensing under the FCC's inter-category sharing rules on channels in the Industrial/Land Transportation and Business Categories

(collectively, "Pool Channels"). The Pool Channels are dedicated for non-commercial internal use by Business and Industrial/Land Transportation licensees such as utilities, and their availability for SMR licensees was intended only to be on a limited basis.

In light of the FCC's proposal to auction future 800 MHz SMR licenses, the FCC should eliminate inter-category SMR access to Pool Channels. As frequencies dedicated primarily to non-commercial use, the Pool Channels are not subject to competitive bidding. If these channels remain available to SMR licenses and not subject to auctions, it will create an artificial demand for the channels by SMR applicants seeking to avoid auctions, which will in turn deplete the availability of these frequencies for use by the non-commercial entities to which the channels were allocated.

Similarly, future SMR access to 800 MHz "General Category" frequencies should be eliminated. Although General Category frequencies are presently dedicated to shared use among SMR and private non-commercial services, the advent of spectrum auctions necessitates a realignment of these frequencies to private, non-commercial use exclusively. The Commission has determined that these channels are not to be subject to auctions.[3/] Therefore,

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[3/] Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994).

like the Pool Channels, continued SMR access would encourage a "run" on these channels resulting in a scarcity of frequencies for Private Mobile Radio Services (PMRS) uses and a circumvention of the Commission's intention to utilize competitive bidding for the awarding of SMR licenses.

General Category spectrum should not be subdivided into Pool Channels and SMR channels since PMRS licensees operate throughout these channels and should be able to expand their systems to meet evolving needs. Moreover, the General Category channels act as a badly needed "safety valve" for PMRS users that currently suffer serious spectrum congestion problems. Unlike SMRs and other CMRS eligibles that currently have a number of spectrum options (800/900 MHz SMR and Broadband PCS) there is no foreseeable relief for internal use private licensees.

III. Incumbents Must Be Protected

As part of its new licensing scheme for the 800 MHz SMR channels, a significant issue that the Commission has to grapple with is the proper treatment of the incumbent licensees. Scattered among the many SMR licensees on the upper 800 MHz channels are a significant number of utilities and pipelines that have been licensed to operate extensive radio systems on these frequencies. These systems are integral to the safe and efficient provision of utility service to the public. A relocation of these systems would impose significant operational

and financial costs on the incumbent utilities and their customers. Accordingly, UTC adamantly opposes the adoption of any mandatory relocation procedures.

Incumbents should be "grandfathered" with primary licensing rights vis-a-vis new licensees in terms of co-channel interference protection. Under these rules a new licensee would be required to afford protection to incumbents as provided under § 90.621(b), either by locating its stations at least 113 km (70 mi) from the facilities of any incumbent, or by complying with the co-channel separation standards set forth in the Commission's short spacing rule.

In addition, the FCC should adopt provisions that would allow incumbent systems to construct stations anywhere within a defined "protected service area." This would allow incumbents to establish "fill-in" base stations within a defined area without requiring prior FCC approval. UTC recommends that the protected service area be based on a fixed radius of 30 kilometers from the center of the incumbent system.

The relocation of incumbent systems should be left to the marketplace through purely voluntary negotiations between the parties. In the alternative, the Commission should adopt a modified version of the negotiation process that it adopted regarding the relocation of microwave licensees from the 2 GHz

band.[4/] Under such a modified negotiation process, incumbent 800 MHz licensees would be given 4 years for voluntary negotiations from the date of initial MTA licensing. After the expiration of this voluntary negotiation period the MTA licensee could initiate a one-year mandatory negotiation period. If no agreement was reached by the end of the one-year negotiation period the MTA licensee could seek involuntary relocation provided that it would guarantee payment of all expenses in connection with a change of frequencies;[5/] and obtain fully comparable facilities. The primary modification in the proposed negotiation plan from that developed in the 2 GHz proceeding is that the voluntary negotiation period would be doubled in recognition of the fact that in implementing their systems MTA licensees will not need to approach many 800 MHz incumbents during the initial two-years of license grant.

In addition, the requirements should specify that an incumbent cannot be forced to relocate its facilities more than once. This last issue is raised by the fact that the probable relocation spectrum for incumbents -- the lower 800 MHz SMR

[4/] Second Report and Order, ET Docket No. 92-9, 8 FCC Rcd 6495 (1993).

[5/] In some situations, it might be necessary to modify other aspects of an incumbent's facilities (e.g., site relocation to meet spacing requirements). In these situations, the MTA licensee would be responsible for ensuring that the modified facilities are "comparable" to the current facilities; i.e., that coverage is achieved to at least the same geographic area served by the current system.

channels -- has also been proposed for auctioning by the Commission. In light of the need for suitable relocation spectrum, and the difficulties involved in attempting to auction spectrum licensed on site specific coordinates the Commission should restrict competitive bidding procedures to the upper 200 SMR channels.

Finally, incumbent licensees should have the terms of their original license grants grandfathered with regard to their replacement facilities. For example, an extended implementation schedule should continue to apply to a relocated licensee who was previously granted this authority.

IV. Licensees Should Not Be Eligible for Both MTA and Local Licensing in the Same Geographic Markets

In order to ensure the benefits of competition within all geographic markets, an entity should be restricted from holding licenses for MTAs and local markets in the same geographic area. In this way there will be some assurance that SMR customers will continue to have some choice in their selection of service providers.

A single monolithic carrier will be unlikely to offer the specialized services that utilities often require -- customized dispatch offerings and "priority override" access to channels during emergency situations -- and instead will concentrate on "plain vanilla" services in order to obtain mass market volume.

Moreover, the existence of additional carriers will help to ensure more competitive pricing. Finally, this should help to continue the viability of smaller more traditional SMRs that provide customized or niche services.

V. Conclusion

The Commission should revise the inter-category sharing rules to prohibit future SMR access to the Pool and General Category channels. This will establish a clear demarcation between SMR and non-SMR spectrum, and more importantly will eliminate the risk of SMR encroachment on non-auctionable spectrum allocated for internal use private radio systems.

The relocation of incumbent systems should be left to the marketplace through purely voluntary negotiations between the parties. Incumbent licensees should have the terms of their original license grants grandfathered with regard to their replacement facilities. In addition, the requirements should specify that an incumbent cannot be forced to relocate its facilities more than once.

In order to ensure the benefits of competition within all geographic markets, an entity should be restricted from holding licenses for MTAs and local markets in the same geographic area.

WHEREFORE, THE PREMISES CONSIDERED, UTC respectfully requests the Commission to take action consistent with the views expressed herein.

Respectfully submitted,

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